IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5923 OF 1991

Pandurang Kashinath Keni ... Petitioner

vs

Shri Yashwant Gajanan Mokashi .. Respondent

..

Mr.Jaydeep Deo for Mrs Suhasini Mutalik for Petitioner

Mrs.Vaidehi Kamat for Mr.P.M.Pradhan for Respondent

CORAM : D.G.KARNIK, J

DATE: 18TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner-landlord challenges the judgment and order dated 4th July, 1991 passed by the learned VIIth Additional District Judge, Thane allowing Civil Appeal No. 56 of 1990 and dismissing the petitioner's suit for possession.

2. The petitioner is an owner of the building known as 'Tara Nivas.' There appears to be in all 23 to 24 tenements in the suit building. The respondent is a tenant occypying one tenement of 2 rooms situated on the ground floor at Tara Nivas (hereinafter referred to as the suit premises.) The petitioner filed a suit against the respondent for possession bearing Civil

Suit No. 1047 of 1986 on the grounds of reasonable and bonafide requirement, non user and acquisition of suitable alternate premises by the respondent. By a judgment and order dated 17th November, 1989 the trial court decreed the suit on all the grounds. On appeal, by a judgment and order dated 4th July, 1991 the District Court reversed the judgment of the trial Court and dismissed the petitioner's suit. That judgment is impugned in this petition.

3. The petitioner claims that there are 10 members in his family and he is in possession of only 2 rooms. Therefore he requires the suit premises reasonable and bonafide. The appellate Court held that the appellant was in possession of at atleast 3 tenements of 2 rooms each. Mr. Karkhanis was a tenant in respect of 1 tenement of 2 rooms. During the pendency of the suit Mr. Karkhanis vacated the rented premises and handed over the possession of the tenement in his possession to the petitioner. Mr. Karkhanis was examined as a witness and he deposed on oath about handing over the possession of the tenements in his possession to the petitioner. His evidence has been believed by the appellate Court. In view of the finding recorded by it that the petitioner is in possession of at least 3 tenements of two rooms each, the appellate Court held that it cannot be said that the petitioner required

the suit premises for reasonably and bonafide for himself and his family. The finding recorded by the appellate Court is a possible finding and supported by evidence.

4. As regards acquisition of suitable alternate premises it was contended that the petitioner's son had purchased a block of one room and a kitchen in Pitambar Cooperative Housing Society, Thane. The said block admittedly was purchased by the respondent's son who was about to be married at the time of the purchase. Considering the fact that the suit premises consist of only 2 rooms and that the son was about to be married, there was nothing for the son desiring to have a separate residence and purchasing a small tenement of 1 room and a kitchen for himself. It was not the case of the petitioner that the premises at Pitambar Cooperative Housing Society has been purchased by the respondent in the name of his son. The acquisition of premises by his son cannot be considered to be acquisition of premises by the respondent. The respondent has no right to reside in the premises of his son. Same is the case in respect of the another accommodation alleged to be acquired by the respondent's daughter-in-law during the pendency of the litigation. She is a doctor. She acquired a small block. The respondent cannot claim that as of

right in the flat belonging to his daughter-in-law. Therefore, it cannot be said that the respondent acquired any suitable residential accomodation. The appellate Court has rightly held that the acquisition of premises by the respondent's son and the daughter-in-law cannot be held to be acquisition of premises by the respondent.

5. It was next contended that the respondent was not using the suit premises for the purpose for which they were let out for more than six months prior to the date of institution of the suit. No evidence was adduced of the alleged non-user. No witness was examined to show that the premsies were not used. What was only contended that the suit summons was served on the respondent at the address of the respondent's son and therefore it must be presumed that the respondent was not using the suit premises. There can be no such presumption. Such a service at the most would prove that on the date when the suit summons was served, the respondent was present at the address of his son. In any event, the suit summons was served after institution of the suit and therefore, it is of no relevance to prove that the respondent was not living in the suit premises for a period of six months prior to date of institution of the suit. No other evidence was adduced regarding

non-user. The appellate Court has therefore, rightly set aside the said finding.

6. The findings recorded by the appellate Court are possible and cannot be interfered within exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence, petition is dismissed with costs. Rule discharged with costs.

D.G.KARNIK, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5793 OF 1991

Amarsing Gulabsing Wadekar ... Petitioner

vs

Narayan Hiraman Shindore ... Respondent

..

Ms Asha Bambhani for Mr.A.K.Abhyankar for Petitioner

Mr.V.A.Thorat for Respondent

CORAM : D.G.KARNIK, J

DATE: 18TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner-tenant challenges the judgment and order dated 11th October, 1991 passed by the learned Additional District Judge, Nasik dismissing Civil Appeal No.304 of 1987 and thereby confirming a decree for possession passed by the Joint Civil Judge, Junior Division, Nasik.

2. The respondent is an owner and landlord of a house property bearing House No.3125 Nasik. The petitioner is a tenant of 2 rooms situated on the ground floor in the said house (hereinafter referred to as the suit premises) at a monthly rent of Rs.30/-. The petitioner was in arrears of rent. By a notice of

demand dated 3rd April, 1980 the respondent demanded from the petitioner sum of Rs.2070/- being the arrears of rent for 69 months. The petitioner failed to pay the arrears of rent within one month of the receipt of notice of demand. The respondent therefore filed a suit bearing Regular Civil Suit No. 809 of 1980 claiming arrears of rent as well as possession of the suit premises on the ground of default. The trial Court held that the petitioner was in arrears of rent and had failed to pay the same within one month from the date of receipt of notice and was thus a defaulter. The trial Court therefore passed a decree for possession. By the judgment and order dated 11th October, 1991 the appellate Court confirmed the decree for possession and dismissed the appeal. That judgment is impugned in this petition.

3. Learned counsel for the petitioner firstly submits that the notice of demand was not proper and in any event the amount claimed in the notice was not payable monthly. She submits that the education cess was not payable monthly and when the respondent sent a composite notice demanding the arrears of rent and education cess which was not payable monthly and it cannot be said that it was a notice of demand of rent payable monthly. She relies upon the decision of the Supreme Court in Raju Shetty vs Ramesh Shirole

reported in (1991) 1 SCC 570. I have perused the notice copy of which was produced in the suit. In para 3 (c) of the notice, the respondent has demanded a sum of Rs.2070/- towards arrears of rent. The notice also contains a schedule stating the grounds on which the respondent would be entitled to claim possession. In the said Schedule the respondent has again reiterated the amount of Rs.2070/- was due towards rent and has further stated that in addition to the rent of Rs.2070/- that the petitioner is also liable to pay education cess amounting to Rs.175.95. The notice clearly is divided into two parts. The first part of the notice is notice of demand which contains a demand only of arrears of rent. It does not contain any demand of education cess. After the notice ends, a Schedule is given which says " Grounds on which the landlord is entitled to claim possession." The arrears of education cess are mentioned as one of the ground for claiming possession. Thus, it cannot be said that the notice was composite notice of demand demanding arrears of rent as well as education cess. The notice of demand was only of the rent. In the grounds of possession, there were two separate grounds given one for arrears of rent and the other arrears of education cess. As the notice is not composite notice, the authority cited by the learned counsel for the petitioner is of

no assistance.

4. There is no dispute regarding the standard rent. It was never disputed that Rs.30/- was not the standard rent. Admittedly, the arrears of rent were not paid within one month from the date of receipt of notice. In the circumstances, the trial Court rightly passed a decree for possession and the appellate Court has rightly dismissed the appeal. Thus, there is no merit in the petition which is hereby dismissed.

5. Rule discharged. No costs.

D.G.KARNIK, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4853 OF 1991

Kisan Shankar Sawase since deceased

through his heir and legal representative

a.Smt Shantabai Kisan Sawase

b.Arvind Kisan Sawase

c.Mukund Kisan Sawase

R/o 294, Shukrawar Peth, Pune-2.

d.Mrs Pushpa Tukaram Ingale

R/o Bombay .. .. Petitioner

vs

Sakharam Babaji Mohol .. Respondent

..

Mrs Anita Agarwal for Petitioners

Mr.P.M.Mengane for Respondent

CORAM : D.G.KARNIK, J

DATE: 18TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner challenges the judgment and order dated 10th September, 1991 passed by the IInd Additional District Judge, Pune dismissing Appeal No.520 of 1991 and thereby confirming a decree for possession passed against the petitioner-tenant.

The facts so far as necessary for decision of this writ petition are stated below:

2. The respondent is the owner and landlord of the property bearing House No.294 Shukrawar Peth, Pune. The petitioner is a tenant occupying theshop premises admeasauring about 12 x 20 sq.ft therein (for short the suit premises). The standard rent of the suit premises is Rs.15 + education cess. The petitioner was in arrears of rent from 20th March, 1970 but he failed and neglected to pay despite notice. The respondent therefore, filed a suit bearing Suit No.538 of 1974 against the petitioner for possession inter alia on the ground of non-payment of rent. It appears that the said suit was dismissed. The petitioner had deposited in the said suit a sum of Rs.950/- from time to time. However, after decision of the suit, the petitioner did not pay the rent and again fell in arrears. Therefore, by a notice of demand dated 24th September, 1977 the respondent again demanded arrears of rent amounting to Rs.400/- and education cess. The petitioner did not pay the arrears within a period of one month on receipt of notice. The respondent therefore filed a suit bearing Regular Civil Suit No.111 of 1978 against the petitioner for possession in the Small Causes Court, Pune. By a judgment and order dated 13th March 2001 the trial Court decreed

the suit and the appellate Court confirmed the decree which was challenged bythe petitioner by filing a Writ Petition No.3587 of 1982. This Court remitted the matter back to the first appellate Court for hearing it afresh and deciding the matter in the light of the directions given by the Court. The matter was heard again by the District Court and by a judgment and order dated 10th September, 1991 the appellate Court again confirmed the decree for possession passed by the trial Court. That judgment is impugned in this petition.

3. It is not disputed that the respondent by issuing a notice dated 24th September, 1997 demanded arrears of rent amounting to Rs.400/-. It is also not disputed that the petitioner received the said notice. Admittedly the petitioner did not pay the arrears of rent of Rs.400/- within one month of the notice. There was no dispute regarding the standard rent as the standard rent was decided in the previous litigation to be Rs.15/- per month. Learned counsel for the petitioner submits that the notice of demand dated 24th September, 1977 was not proper and it did not give the proper calculations of the arrears. In my view, it is not necessary for a landlord to give the calculations of the arrears in the notice. It would be sufficient if he satisfies the amount of arrears and if the arrears are disputed, it is for the

tenant to make his own calculations and pay the arrears which according to him are due. The tenant cannot simply refuse to pay by saying that the landlord has not given the details of the arrears. Learned counsel for the petitioner then submits that the demand of arrears of rent of Rs.400/- was excessive. Admittedly, rent was not paid to the respondent from 20th March, 1970 till 24th September, 1976 i.e. for 7 years and 6 months equivalent to 90 months. The rent for 90 monthly calenders are for 15 months at Rs.1,350/- out of the said sum of Rs.1,350/- the petitioner had deposited a sum of Rs.950/- in Court in previous suit in Regular Civil Suit No. 433 of 1974 giving credit of the said sum deposited an amount of Rs.400/- was due and that was the exact sum demanded in notice dated 24th September, 1977 as arrears of rent. Thus, the demand notice was proper and correct and there was no excessive demand. Assuming that there was any excess demand, the tenant ought to have paid atleast the admitted amount due within one month of the notice which he has failed to do.

4. Learned counsel for the petitioner then submits that the tenant had paid to the respondent a sum of Rs.100/- for which receipt was not passed. She further says that the tenant also spent Rs.199/- for repairs to the staircase. Both these payments were

denied by the respondent. The trial Court as well as the appellate Court has held that the petitioner has not proved the payment of Rs.100/- to the respondent and have also held that the petitioner has not proved that he paid Rs.199/- towards repairs. Assuming further in favour of the petitioner, and further assuming that the petitioner was entitled to a credit of amount allegedly spent for repairs still the total amount of Rs.290/- was due against the rent due of Rs.400/- leaving still a balance of Rs.101/- whic covers rent of more than six months. Thus, rent for more than six months was admittedly due on the date of notice and despite demand, the petitioner failed and neglected to make the payments. The appellate Court rightly passed a decree on the ground of default in payment of rent.

5. Learned counsel for the petitioner lastly contends that in the notice, thie respondent has claimed arrears of education cess in addition to notice. Education cess claimed was not shown to be payable monthly and no argument was pleaded to show that the education cess was to be recovered monthly. Therefore, according to the learned counsel, the total rent was not payable monthly and the case would not fall under section 12 (3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Firstly it needs to be mentioned that in the notice

education cess was not claimed as part of rent but was claimed separately. An amount of Rs. 400/- were claimed as rent and Rs.16/- was claimed as education cess separately. Demand for rent cannot become payable because education cess was claimed separately. Assuming otherwise and assumnig that the case would fall under section 12 (3) (b) of theAct, stil the tenant has not paid arrears of rent. No defence was taken by the tenant in the trial Court that the case would fall under section 12 (3) (b) and he has offered that the provisions of section 12 (3) of the Act the tenant cannot be allowed to raise because the case falls under section 12 3) (b). Assuming that it is the has not paid arrears of rent So hearing nor paid regular. Therefore, there is no merit in the petitiion which is dismissed. Rule discharged with costs.

D.G.KARNIK, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2021 OF 1992

Tarabai W/o Makbulkhan Bargir ... Petitioners

& anr.

vs

Tarabai W/o Dashrath Shinde ..Respondent

since deceased through her heirs and

legal representatives Rajaram

Dashrath Shinde @ Joshi & ors.

..

Mr.Tejpal Ingale for Petitioners

None for Respondent nos.1 to 5.

CORAM : D.G.KARNIK, J

DATE: 19TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner challenges the judgment and order dated 1st April, 1991 passed by the learned IInd Additional District Judge, Sangli allowing Civil Appeal No. 50 of 1983 and dismissing the petitioner's suit for possession.

2. The petitioner is a landlord of the property bearting C.T.S.No.1897/1 Mangawar Peth, Miraj District Sangli. The respondent is a tenant of two rooms

(hereinafter refeerred to suit premises) in the said house on a monthly rent of Rs.10/. The respondent was in arrears of rent from January, 1976 to June, 1976. Therefore, by a notice of demand dated 12th July, 1976 the petitioner terminated the tenancy of the respondent and called upon her to pay the arrears of rent. As the rent was not paid within one month, the petitioner filed a suit for possession bearing Regular Civil Suit No. 3 of 1979 in the Court of Civil Judge, Junior Division, Miraj. By the judgment and order dated 9th November, 1982 the trial Court decreed the suit on the ground of default. The ground of bonafide requirement was however rejected. On appeal by the respondent-tenant, the District Court allowed the appeal and dismissed the petitioner's suit by judgment and order dated 1st April, 1991. That judgment is impugned in this petition.

3. By a notice of demand dated 12th July, 1976 the petitioner demanded from the respondent a sum of Rs.660/- being the arrears of rent from January 1971 to June, 1976. There is no dispute about standard rent and no application for determination of standard rent has ever been filed by the respondent. The respondent did not pay the rent within one month from the date of notice. The appellate Court however held that the respondent had paid a sum of Rs.206/- to the

deceased husband of the petitioner and had also paid the municipal taxes amounting to Rs.227/-. The appellate Court held that the respondent was entitled to adjust the amount of municipal taxes paid by her towards rent and after payment of Rs.206/- paid to the petitioner's husband and municipal taxes of Rs.227/- were taken into consideration, the respondent was entitled to an adjustment of Rs.434/-. Out of the sum of Rs.660/- the appellate Court held that in the notice, the petitioner had not shown the adjustment and therefore the demand of Rs.660/- made in the notice was excessive and exhorbitant. Relying on the decision of the learned Single Judge of this Court in Ganpat vs Motilal reported in AIR 1977 BOMBAY 344, the appellate Court held that the notice was invalid as it made a grossly excessive and exhorbitant demand of Rs.660/- when actually only a sum of Rs.660/- minus Rs.434/- = Rs.226/- was due. The appellate Court therefore held that there was no valid notice of demand and therefore the respondent could not be branded as a defaulter. The decision of this Court in Ganpat vs Motilal supra has been over ruled by the Division Bench of this Court rendered in Chhaganlal Mulchand Jain vs Narayan Jagannath Bangh reported in AIR 1983 BOMBAY 212. Overruling the said decision,

the Division Bench observed:

" In our opinion, this will not be a correct proposition. The normal rule is that a notice exchanged between the landlord and the tenant should be construed liberally and not for the purpose of finding any fault. This has been so held by the Supreme Court in the case of Bhagabandas Agarwalla vs Bhagwandas AIR 1977 SC 1120. We have already observed that the landlord and the tenant both are presumed to know as to what is the quantum of rent and permitted increases that had remained unpaid and hence when the landlord claimed the payment of such arrears by a notice any mistake as regards the quantum of rent would not make the notice bad. It will be very difficult to accept the contention that a mistake here or a mistake there in the demand notice would entail the dismissal of the suit. It is possible that in a particular case the landlord may make a false and untenable demand of certain amount alongwith the claim about which there will not be any dispute,. In such a case the tenant will have an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one. If in due course of time at the stage of the suit the claim is proved to be false the tenant obviously would be protected as he has made th payment of the amount that was actually due. But he will not be able to resist the same if within one month from the notice has not paid even the

arrears to which the landlord is entitled. The view expressed in the case of Ganpat vs Motilal (AIR 1977 Bom 344) (supra) that the notice would be bad if the notice includes untenable claim is too general a statement and we disagree with it. "

4. In view of the law laid down by the Division Bench of this Court, the finding recorded by the appellate Court that the notice was invlaid is required to be set aside. As there was admittedly no dispute regarding the standard rent and as the respondent has not paid rent within one month, a decree for eviction must follow. Accordingly, the impugned judgment and order is set aside and the judgment of the trial Cout is restored. Petition allowed. Rule made absolute in terms of prayer clause (d).

D.G.KARNIK, J

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4031 OF 1992

Shri Ravindra Govindrao Patil ... Petitioner

vs

1) Smt Sushila w/o Bhimaji ... Respondents

Kulkarni @ Bhimrao Kulkarni and ors.

..

Mr.V.B.Rajure for Petitioner

None for Respondents

CORAM : D.G.KARNIK, J

DATE: 18TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner-landlord challenges the judgment and order dated 17th March, 1991 passed by the learned IInd Additional District Judge, Solapur allowing Civil Appeal No. 388 of 1987 dismissing thereby the petitioner's suit for possession.

2. The petitioner is a landlord of house property bearing No. 80 of City Survey No. 8618/3 Solapur. One Bhimaji Kulkarni husband of the respondent no.1 and father of respondent nos. 2 to 8 (for short Bhimaji) was a tenant of the petitioner occupying one

room (for short the suit premises) in the said house. The petitioner filed a suit bearing Regular Civil Suit No.928 of 1982 against Bhimaji for possession on the ground of default bonafide requirement and that the premises were required for immediate demolition and reconstruction. The trial Court negatived the ground of default as well as requirement of the parties for immediation demolition and reconstruction. The trial Court however held that the petitioner proved that the suit premises were required by the petitioner reasonably and bonafide for his own use and occupation and passed a decree for possession on that ground. The heirs of Bhimaji the original tenant filed an appeal bearing Civil Appeal No.388 of 1987 challenging the said decree. In appeal, the ground of bonafide requirement was not pressed. In view of the fact that the petitioner had obtained possession of the premises from other tenant and therefore his requirement was met. However, the respondent contended that Anant one of the sons of the original tenant Bhimaji had acquired a flat at Ganesh Nagar, Hotgi Road, Solapur and therefore decree for possession should be passed. The appellate Court considered and rejected the said submission. In view of the fact that there was no other ground of eviction the appellate Court allowed the appeal and dismissed the suit by a judgment and order dated 17th March 1991. That judgment is

impugned in this petition.

3. Learned counsel for the petitioner submits that Anant son of Bhimaji is employed in a bank and has acquired a flat at Ganesh Nagar, Hotgi Road, Solapur. The flat admeasures 400 sq.ft and is suitable in all respects and therefore it must be held that the tenant has acquired suitable residencial premises and is liable to be evicted. I am unable to agree. Bhimrao left behind him his widow Sushila, two sons Anant and Shrikant, two married daughters and one unmarried daughter. On death of Bhimaji tenancy would be transferred in accordance with section 5 (11) (c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which reads thus :

" In relation to any premises let for residence, when the tenant dies, whether the death has occured before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978 any member of the tenant's family residing with the tenant at the time of his death, or in the absence of such member any heir of the deceased tenant, as may be decided in default of agreement by the Court. "

4. It is thus clear that only one of the heirs of the deceased tenant would inherit the tenancy. Other family members may continue to live with such a new tenant who inherits the tenancy. However, the tenancy would be inherited by one out of the many persons living with the deceased. The question as to who inherits the tenancy is a question whch is to be

decided by the agreement between the parties. In the present case, there was no agreement between the parties as to who had inherited tenancy. However, fact remains that Anant son of the deceased tenant having acquired suitable residential premises had shifted and was not residing with the deceased in the suit premises and therefore Anant could not have inherited tenancy. It is therefore true that all the family members who are residing with the deceased at the time of his death inherits the tenancy and as Anant was not residing with the deceased he could not have inherited the tenancy. Only one of the remaining three family members residing with Bhimaji i.e. his widow, son or unmarried daughter who can inherit the tenancy and could be regarded as a tenant. None of them had acquired any alternate premises. In the circumstances, decree for possession cannot be passed against them. Hence there is no merit in the petition in the petition which is hereby dismissed. Rule discharged with costs.

D.G.KARNIK, J